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Trademark Bar Cheers for ‘Good News in Gloomy Time’ with High Court's Romag Fasteners Holding

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Following a unanimous decision from the Supreme Court in *Romag Fasteners, Inc. v. Fossil, Inc.*, Benjamin Hodges was quoted in an article featuring insights from the trademark bar that published in IPWatchdog on April 23, 2020. The Court held that willful infringement is only one consideration for awarding an infringer's profits. According to Hodges, "The decision in *Romag* resolves the circuit split regarding whether willfulness is required for disgorgement of profit, but it's practical effect remains to be seen."

Hodges states, "If anything, I believe this will simply delay or complicate resolution of trademark cases. The decision removes a route of summary judgement in those circuits that previously required willfulness, but ultimately it may not change behavior for trademark plaintiffs. The Court's opinion, and the concurring opinions, discuss that mens rea, such as willfulness, still remains an important consideration when the court weighs whether equitable factors warrant disgorgement of profits. This will likely mean that more plaintiffs attempt to seek disgorgement as a remedy in those circuits that previously required willfulness. It will likely complicate settlement discussions as defendants in those instances will see disgorgement as unlikely from their view while plaintiffs will be reluctant to give up the leverage of disgorgement. For courts, it will have a similar effect: adding to the burden on courts to determine another issue without a bright line rule, and one likely asserted by a large number of plaintiffs."

For the full article, click here.

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